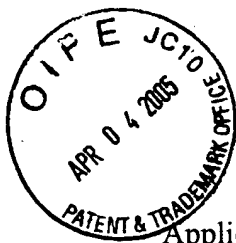


04-07-05

Express Mail Label No.: EV 473 990 868 US

Date of Deposit: April 4, 2005

DAF ~~2-10~~
EW



Attorney Docket No. 17564-145

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Jie Tang et al.
Patent No. 5,891,212
Reissue Application Serial No.: 09/827,605
Filed: April 6, 2001
For: APPARATUS AND METHOD FOR MAKING
UNIFORMLY SIZED AND SHAPED SPHERES

Examiner: George P. Wyszomierski
Art Unit: 2181

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION FOR PROCEEDING WITH REISSUE PATENT APPLICATION
BY OTHER THAN ALL THE INVENTORS UNDER 37 C.F.R. § 1.47

Sir:

Applicants submit herewith this petition under 37 C.F.R. § 1.47 for filing the present reissue patent application by other than all the inventors. Under 37 C.F.R. § 1.47, if a joint inventor refuses to join in an application for patent, the application may be made by the other inventor(s) on behalf of himself or herself and the nonsigning inventor. The oath or the declaration in such an application must be accompanied by a petition including proof of the pertinent facts, the fee set forth in § 1.17(g) and the last known address of the nonsigning inventor.

To that end, Applicants submit herewith this petition under 37 C.F.R. § 1.47 including proof of pertinent facts of the refusal of one of the joint inventors of the above-identified reissue application for patent. In addition, Applicants submit herewith a check in the amount of \$200 as the requisite fee under 37 C.F.R. § 1.17(g). The last known address of the nonsigning inventor is also provided herein.

The reissue patent application was made by the joint inventors Jie Tang, Gary B. Hess, Mark D. Muszynski and Thomas S. Goehring, as identified in the Reissue

04/07/2005 MBIZUNES 00000001 09827605

02 FC:1401
03 FC:1463

500.00 OP
200.00 OP

Application Declaration by Inventor Pursuant to 37 C.F.R. § 1.175, originally filed in this reissue application on September 17, 2001 with the U.S. Patent Office.

Attached as Exhibit A are copies of U.S. Postal Service Express Mail Labels under which a Supplement Reissue Application Declaration By The Inventor Pursuant to 37 C.F.R. § 1.175 was sent to one of the inventors, Mark D. Muszynski, requesting his signature of the Supplemental Declaration. The Express Mail Label No. EV 475173147 with a "date-in" of March 15, 2005 indicates the date on which the Supplemental Declaration was sent to Mr. Muszynski at his last known address of: 10590 M-52, Manchester, Michigan. The Express Mail Label No. EV 473990797 with a "date-in" of March 30, 2005 indicates the date on which the Supplemental Declaration was sent a second time to Mr. Muszynski requesting his signature.

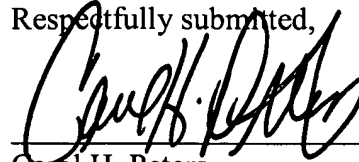
In addition, in response to our telephone conversation with another inventor of this application, Mr. Goehring, we received via his email dated April 1, 2005 the last contact information that he had for Mr. Muszynski. A copy of this email is attached as Exhibit B. We attempted to send an email to Mr. Muszynski at the email address provided in Mr. Goehring's email, but the email was returned to us as undeliverable. We attempted to contact Mr. Muszynski at the telephone numbers provided in Mr. Goehring's email, but these telephone numbers have been disconnected.

Further, we confirmed with the U.S. Postal Service delivery of the Supplemental Declaration sent under the Express Mail Label Nos. EV 475173147 and EV 473990797 and learned from the U.S. Postal Service records that these mailings were forwarded to Marietta, Georgia. Copies of the confirmatory records of these Express Mail Label numbers are attached as Exhibit C.

Thus, Applicants believe that in view of the forwarding address provided by the U.S. Postal Service confirmatory records that Mr. Muszynski received the Supplemental Declaration and, because he did not execute and return the Supplemental Declaration as requested that he does not wish to sign the Supplemental Declaration. Applicants, therefore, wish to proceed with the present reissue application with less than all of the inventors.

Should the Commissioner have any questions concerning this petition, the Commissioner is respectfully requested to telephone the undersigned at the number provided.

Respectfully submitted,



Carol H. Peters

Registration No. 45,010
Mintz, Levin, Cohn, Ferris
Glovsky and Popeo, P.C.
Attorneys for Applicant
One Financial Center
Boston, MA 02111
Telephone: 617/348-4914
Facsimile: 617/542-2241
email: cpeters@mintz.com

Date: April 4, 2005

A

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Label 11-F June 2002



EV 475173147 US



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ORIGIN (POSTAL USE ONLY)			
PO ZIP Code 02205	Day of Delivery <input checked="" type="checkbox"/> Next <input type="checkbox"/> Second <input type="checkbox"/>	Flat Rate Envelope <input type="checkbox"/>	
Date In Mo. 3 Day 15 Year 05	<input type="checkbox"/> 12 Noon <input checked="" type="checkbox"/> 3 PM	Postage \$ 13.65	
Time In 7:03 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	Military <input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day	Return Receipt Fee	
Weight 3.9 lbs. 0.5 ozs.	Int'l Alpha Country Code	COD Fee	Insurance Fee
No Delivery <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday	Acceptance Clerk Initials MD	Total Postage & Fees \$ 13.65	

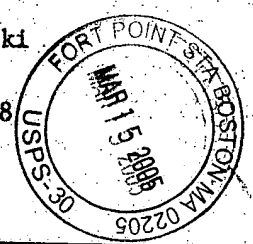
DELIVERY (POSTAL USE ONLY)		
Delivery Attempt	Time	Employee Signature
Mo. Day	<input type="checkbox"/> AM <input type="checkbox"/> PM	
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Delivery Date	Time	Employee Signature
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<input type="checkbox"/> WAIVER OF SIGNATURE (Domestic Only) Additional merchandise insurance is void if waiver of signature is requested. I wish delivery to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that article can be left in secure location) and I authorize that delivery employee's signature constitutes valid proof of delivery.		
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 Carol H. Peters
 MINTZ LEVIN COHN FERRIS
 GLOVSKY & POPEO PC
 FINANCIAL CTR
 BOSTON MA 02111-2621
 Docket #: 17564-145

TO: (PLEASE PRINT)
 Mr. Mark D. Muszynski
 10590 M-52
 Manchester, MI 48158



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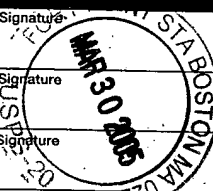
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Label 11-F June 2002

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Weight 7.2 lbs	Int'l Alpha Country Code	COD Fee	Insurance Fee
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Delivery Date	Time	Employee Signature	
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<input type="checkbox"/> WAIVER OF SIGNATURE (Domestic Only) Additional merchandise insurance is void if waiver of signature is requested. I wish delivery to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that article can be left in secure location) and I authorize that delivery employee's signature constitutes valid proof of delivery.			
NO DELIVERY		<input type="checkbox"/> Weekend <input type="checkbox"/> Holiday	Customer Signature



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FROM: (PLEASE PRINT) 617 542 6000
Carol H. Peters
MINTZ LEVIN COHN FERRIS
GLOVSKY & POPE PC
1 FINANCIAL CTR.
805 IN MA 02111-2621
Docket #: 17564-145

TO: (PLEASE PRINT) PHONE ()
Mr. Mark D. Muszynski
10590 M-52
Manchester, MI 48158

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B

Peters, Carol

From: Thomas Goehring [Thomas.Goehring@tenneco-automotive.com]
Sent: Friday, April 01, 2005 11:43 AM
To: Peters, Carol
Subject: Patent 5,891,212 Reissue

I faxed the signature page to you this morning. I also included what contact information on Mark Muszynski I have and will repeat it below. Please confirm your receipt of my fax.

The last contact information I have on Mark Muszynski is the following:

Email: muszynski@tpresearch.com
Office Phone: 734-665-9182 ext. 336
Home Phone: 734-428-9253

Thank you!

Thomas S. Goehring
Tenneco Automotive
Grass Lake Engineering Center
Metallurgical Department
517-796-6594

C



Track & Confirm

Current Status

You entered EV47 5173 147U S

Your item was delivered at 12:34 pm on March 17, 2005 in MARIETTA, GA 30066. The item was signed for by B MUSZYNSKI.

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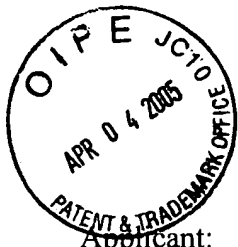
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Express Mail Label No.: EV 473 990 868 US

Date of Deposit: April 4, 2005

Attorney Docket No. 17564-145

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Jie Tang et al.
Patent No. 5,891,212
Reissue Application Serial No.: 09/827,605
Filed: April 6, 2001
For: APPARATUS AND METHOD FOR MAKING
UNIFORMLY SIZED AND SHAPED SPHERES

Examiner: George P. Wyszomierski
Art Unit: 2181

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

NOTICE OF APPEAL FROM THE PRIMARY EXAMINER
TO THE BOARD OF PATENT APPEALS AND INTERFERENCES
PURSUANT TO 37 C.F.R. §1.191

Sir:

Applicants hereby appeal to the Board of Patent Appeals and Interferences from the decision of the Examiner mailed October 4, 2004 finally rejecting claims 1-40.

Pursuant to 37 C.F.R. 1.17(b), the requisite fee of \$500 to file the Notice of Appeal is enclosed. If the enclosed check is insufficient, the Commissioner is hereby authorized to charge the balance required, or to credit any overpayment, to the account of the undersigned, Deposit Account No. 50-0311, referencing Attorney Docket No. 27585-025. **A duplicate copy of this notice of appeal is enclosed for this purpose.**

Respectfully submitted,

Carol H. Peters

Registration No. 45,010
MINTZ, LEVIN, COHN, FERRIS
GLOVSKY and POPEO, P.C.
Attorneys for Applicant(s)
One Financial Center
Boston, MA 02111
Telephone: 617/348-4914
Facsimile: 617/542-2241
email: cpeters@mintz.com

04/07/2005 MBIZUNES 00000001 09827605

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04/07/2005 MBIZUNES 00000001 09827605

02 FC:1401

500.00 0P

03-FC:1463

-200-00-8P

Date: April 4, 2005



Express Mail Label No.: EV 473 990 868 US

Date of Deposit: April 4, 2005

Attorney Docket No. 17564-145

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Jie Tang et al.
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Examiner: George P. Wyszomierski
Art Unit: 2181

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

COPY

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Respectfully submitted,

Carol H. Peters

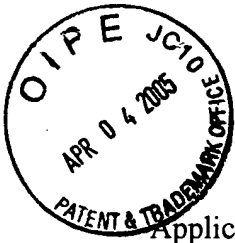
Registration No. 45,010
MINTZ, LEVIN, COHN, FERRIS
GLOVSKY and POPEO, P.C.
Attorneys for Applicant(s)
One Financial Center
Boston, MA 02111
Telephone: 617/348-4914
Facsimile: 617/542-2241
email: cpeters@mintz.com

Date: April 4, 2005

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Examiner: George P. Wyszomierski
Art Unit: 2181

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO FINAL OFFICE ACTION MAILED OCTOBER 4, 2004

Sir:

Responsive to the final Office Action mailed October 4, 2004, Applicants respond below to the issues raised therein.

Request for Supplemental Reissue Application Declaration

The Examiner has requested the Applicants provide a Supplemental Reissue Declaration under 37 C.F.R. § 1.175(b)(1) because errors in the original patent have been corrected since the filing of the last Reissue Declaration in this application. The error in the original Letters Patent that was corrected includes the correction to the title of the invention, namely, correcting the title "Apparatus and Method for Making Uniformly" to read "Apparatus and Method For Making Uniformly Sized and Shaped Spheres." This correction was previously made to the original Letters Patent through a Certificate of Correction. In response to an Office Action, Applicants incorporated this correction into the title of the reissue application.

Rejection of Claims 1-40 As Being Based On A Defective Reissue Declaration

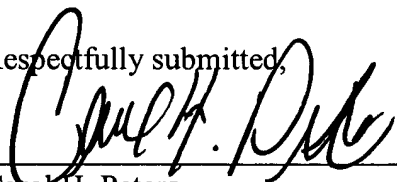
In addition, the Examiner has rejected claims 1-40 as being based upon a defective reissue declaration under 35 U.S.C. § 251 and 37 C.F.R. § 1.175, due to the defect set forth above.

Submission of Supplemental Reissue Application Declaration

Applicants submit herewith a Supplemental Reissue Application Declaration By The Inventor pursuant to 37 C.F.R. § 1.175, which has been executed by the inventors Tang, Hess and Goehring. However, based upon the facts before them, Applicants believe that the joint inventor, Mark D. Muszynski, does not wish to execute the Supplemental Reissue Application Declaration. Therefore, Applicants submit herewith a Petition For Proceeding With Reissue Patent Application By Other Than All The Inventors pursuant to 37 C.F.R. § 1.47, including evidence of the pertinent facts by which Applicants draw such conclusion the inventor does not wish to sign. Applicants respectfully request reconsideration of claims 1-40.

In anticipation of the grant of the Petition pursuant to 37 C.F.R. § 1.47, Applicants respectfully submit the submission of the Supplemental Reissue Application Declaration complies with the Examiner's request to correct a defective Reissue Declaration. Applicants, therefore, respectfully request withdrawal of the rejection of claims 1-40.

Respectfully submitted,



Carol H. Peters
Registration No. 45,010
Mintz, Levin, Cohn, Ferris
Glovsky and Popeo, P.C.
Attorneys for Applicant
One Financial Center
Boston, MA 02111
Telephone: 617/348-4914
Facsimile: 617/542-2241
email: cpeters@mintz.com

Date: April 4, 2005

**SUPPLEMENTAL REISSUE APPLICATION DECLARATION
BY THE INVENTOR PURSUANT TO 37 C.F.R. §1.175**

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name.

I believe I am an original, first and joint inventor of the subject matter which is described and claimed in U.S. Patent No. 5,891,212, granted April 6, 1999, and for which a reissue patent is sought on the invention entitled:

**APPARATUS AND METHOD FOR
MAKING UNIFORMLY SIZED AND SHAPED SPHERES**

the specification of which:

- ☒ was filed on **April 6, 2001**, as reissue application **Serial No. 09/827,605**, bearing Attorney Docket No. 17564-145, which is a reissue application of **Serial No. 08/931,295** issued on September 16, 1997 as U.S. Patent 5,891,212, which is a continuation-in-part application of **Serial No. 08/892,145** now abandoned.

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above.

Every error in the patent which was corrected in the present reissue application, and is not covered by a prior oath/declaration submitted in this application, arose without any deceptive intention on the part of the applicant.

I acknowledge the duty to disclose information which is material to the patentability as defined in 37 C.F.R. §1.56.

I verily believe the original patent to be wholly or partly inoperative or invalid by reason of the patentee claiming less than he had the right to claim in the patent.

Reissue Application Declaration
U.S. Patent No. 5,891,212
Attorney Docket No. 17564-145

At least one error upon which reissue is based is described below.

The reissue application is a broadening reissue application. Claims 1 and 16 have been amended to more broadly recite the manner in which the stream of material is broken into spheres and to remove a step of passing of the spheres through an electric field. The amendments merely remove unnecessary limitations from claims 1 and 16. Support for these amendments to claims 1 and 16 is provided in the original disclosure.

All errors corrected in this reissue application arose without any deceptive intention on the part of the applicant. As a named inventor, I hereby appoint the following attorneys and/or agents to prosecute this application and to transact all business in the U.S. Patent and Trademark Office connected therewith:

Kevin Ainsworth, Registration No. 39,586
Ingrid Beattie, Registration No. 42,306
William Belanger, Registration No. 40,509
Naomi Biswas, Registration No. 38,384
David F. Crosby, Registration No. 36,400
Ivor R. Elrifi, Registration No. 39,529
Heidi A. Erlacher Reg. No. 45,409
Richard Gervase, Registration No. P-46,725
Brian P. Hopkins, Registration No. 42,669
Shane Hunter, Registration No. 41,858
David E. Johnson, Registration No. 41,874
Christina Karnakis Reg. No. P-45,899
Cynthia Kozakiewicz, Registration No. 42,764
A. Jason Mirabito, Registration No. 28,161
Carol H. Peters, Registration No. 45,010
Michael Renaud Reg. No. 44,299
Robert Sayre, Registration No. 42,124
Janine Susan, Registration No. 46,119

Please address all telephone calls to Carol H. Peters at telephone number 617/348-4914, and all correspondence to:

Carol H. Peters
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
One Financial Center
Boston, Massachusetts 02111
Fax: 617/542-2241

Reissue Application Declaration
U.S. Patent No. 5,891,212
Attorney Docket No. 17564-145

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this declaration is directed.

Jie Tang

3/22/2005

Inventor's Signature

Date

Full Name of Inventor: Jie Tang

Citizenship: China

Residence: 1750 Creek View Drive, Fogelsville, PA 18051

Post Office Address: 1750 Creek View Drive, Fogelsville, PA 18051

Inventor's Signature

Date

Full Name of Inventor: Gary B. Hess

Citizenship: U.S.A.

Residence: 11122 Stephenson Road, Onsted, MI 49265

Post Office Address: 11122 Stephenson Road, Onsted, MI 49265

Inventor's Signature

Date

Full Name of Inventor: Mark D. Muszynski

Citizenship: U.S.A.

Residence: 10590 M-52, Manchester, MI 48158

Post Office Address: 10590 M-52, Manchester, MI 48158

Inventor's Signature

Date

Full Name of Inventor: Thomas S. Goehring

Citizenship: U.S.A.

Residence: 6307 County Farm Road, Jackson, MI 49201

Post Office Address: 6307 County Farm Road, Jackson, MI 49201

**SUPPLEMENTAL REISSUE APPLICATION DECLARATION
BY THE INVENTOR PURSUANT TO 37 C.F.R. §1.175**

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name.

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**APPARATUS AND METHOD FOR
MAKING UNIFORMLY SIZED AND SHAPED SPHERES**

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I acknowledge the duty to disclose information which is material to the patentability as defined in 37 C.F.R. §1.56.

I verily believe the original patent to be wholly or partly inoperative or invalid by reason of the patentee claiming less than he had the right to claim in the patent.

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Attorney Docket No. 17564-145

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All errors corrected in this reissue application arose without any deceptive intention on the part of the applicant. As a named inventor, I hereby appoint the following attorneys and/or agents to prosecute this application and to transact all business in the U.S. Patent and Trademark Office connected therewith:

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Ingrid Beattie, Registration No. 42,306
William Belanger, Registration No. 40,509
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Richard Gervase, Registration No. P-46,725
Brian P. Hopkins, Registration No. 42,669
Shane Hunter, Registration No. 41,858
David E. Johnson, Registration No. 41,874
Christina Karnakis Reg. No. P-45,899
Cynthia Kozakiewicz, Registration No. 42,764
A. Jason Mirabito, Registration No. 28,161
Carol H. Peters, Registration No. 45,010
Michael Renaud Reg. No. 44,299
Robert Sayre, Registration No. 42,124
Janine Susan, Registration No. 46,119

Please address all telephone calls to Carol H. Peters at telephone number 617/348-4914, and all correspondence to:

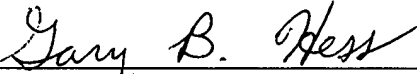
Carol H. Peters
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
One Financial Center
Boston, Massachusetts 02111
Fax: 617/542-2241

Reissue Application Declaration
U.S. Patent No. 5,891,212
Attorney Docket No. 17564-145

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this declaration is directed.

Inventor's Signature
Full Name of Inventor: Jie Tang
Citizenship: China
Residence: 1750 Creek View Drive, Fogelsville, PA 18051
Post Office Address: 1750 Creek View Drive, Fogelsville, PA 18051

Date



Inventor's Signature
Full Name of Inventor: Gary B. Hess
Citizenship: U.S.A.
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3-23-05

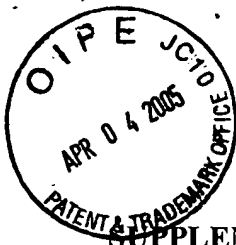
Date

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Date



Attorney Docket No. 17564-145

**SUPPLEMENTAL REISSUE APPLICATION DECLARATION
BY THE INVENTOR PURSUANT TO 37 C.F.R. §1.175**

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name.

I believe I am an original, first and joint inventor of the subject matter which is described and claimed in U.S. Patent No. 5,891,212, granted April 6, 1999, and for which a reissue patent is sought on the invention entitled:

**APPARATUS AND METHOD FOR
MAKING UNIFORMLY SIZED AND SHAPED SPHERES**

the specification of which:

- ☒ was filed on **April 6, 2001**, as reissue application **Serial No. 09/827,605**, bearing Attorney Docket No. 17564-145, which is a reissue application of **Serial No. 08/931,295** issued on September 16, 1997 as U.S. Patent 5,891,212, which is a continuation-in-part application of **Serial No. 08/892,145** now abandoned.

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above.

Every error in the patent which was corrected in the present reissue application, and is not covered by a prior oath/declaration submitted in this application, arose without any deceptive intention on the part of the applicant.

I acknowledge the duty to disclose information which is material to the patentability as defined in 37 C.F.R. §1.56.

I verily believe the original patent to be wholly or partly inoperative or invalid by reason of the patentee claiming less than he had the right to claim in the patent.

Reissue Application Declaration
U.S. Patent No. 5,891,212
Attorney Docket No. 17564-145

At least one error upon which reissue is based is described below.

The reissue application is a broadening reissue application. Claims 1 and 16 have been amended to more broadly recite the manner in which the stream of material is broken into spheres and to remove a step of passing of the spheres through an electric field. The amendments merely remove unnecessary limitations from claims 1 and 16. Support for these amendments to claims 1 and 16 is provided in the original disclosure.

All errors corrected in this reissue application arose without any deceptive intention on the part of the applicant. As a named inventor, I hereby appoint the following attorneys and/or agents to prosecute this application and to transact all business in the U.S. Patent and Trademark Office connected therewith:

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Reissue Application Declaration
U.S. Patent No. 5,891,212
Attorney Docket No. 17564-145

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this declaration is directed.

Inventor's Signature

Date

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April 1, 2005

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